



## *COMMONWEALTH of VIRGINIA*

### *DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

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### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO DYNAMIC AVIATION GROUP, INC. FOR THE**

**1402 Airport Road, 1675 Airport Road, and 7487 Kiser Road Facilities**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Dynamic Aviation Group, Inc., regarding the Dynamic Aviation Group, Inc. facility in Bridgewater, VA for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Dynamic" means Dynamic Aviation Group, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries, including Rockingham Aviation Corp. Dynamic is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Property" means the property on which Dynamic's operations take place, including 1402 Airport Road, 1675 Airport Road, and 7487 Kiser Road. Discharges of stormwater associated with industrial activity occur from the Property.
9. "Logistics Center" means the Dynamic building located at 7487 Kiser Road in Bridgewater, Virginia.
10. "Building 7" means the Dynamic leased building located at 1675 Airport Road in Bridgewater, VA.
11. "Airport" means the Dynamic's operations located at 1402 Airport Road in Bridgewater, Virginia.
12. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9  
VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR§ 261.2.
18. "The Stormwater Regulation" means the General VPDES Permit for Discharges of Stormwater Associated with Industrial Activity Regulation, 9 VAC 25-151-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "VPDES General Permit" means the General Permit for Discharges of Stormwater Associated with Industrial Activity, No. VAR05, which was last reissued under the State Water Control Law and the Stormwater Regulation on July 1, 2014 and which expires on June 30, 2019.
25. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
26. "VWP" means Virginia Water Protection.

27. "VWP Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
28. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Dynamic owns the 1402 Airport Road and 7487 Kiser Road Facilities. It leases portions of the 1675 Airport Road Facility and it operates all of the Facilities. Coverage under the VPDES General Permit would allow Dynamic to discharge stormwater associated with industrial activities from the Property to the North River, or an unnamed tributary to North River, in strict compliance with the terms and conditions of the VPDES General Permit.
2. North River and its tributaries are located in the Shenandoah River Basin. North River is listed in DEQ's 305(b) report as impaired due to the presence of Fecal Coliform and E. coli. The sources of impairment are listed as agriculture, wildlife other than waterfowl, and non-point source discharges.
3. North River and its tributaries are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
4. On July 30, 2014, DEQ issued a VPDES General Permit for stormwater discharges to "Dynamic Aviation Corp."
5. On June 20<sup>th</sup> and July 28<sup>th</sup>, 2016, DEQ staff conducted inspections at the Facilities. The staff observed:
  - a. the physical characteristics of the Facilities,
  - b. the existence of stormwater outfalls or point sources at the Facilities,
  - c. the presence of industrial materials, equipment, solid and hazardous wastes in exposed areas and/or adjacent to stormwater conveyance features at the Facilities; as well as the presence of maintenance shops and equipment cleaning operations at the Facilities,
  - d. the presence of sources of wastewater discharges (i.e. an oil water separator, utility sinks and sump pumps) at the Logistics Center,
  - e. the lack of regular inspections of the Facilities for potential pollution sources, and

- f. the lack of regular visual observation of the quality of stormwater discharges at the Logistics Center and Building 7.

During a review of file materials for the Facilities, DEQ staff noted that the registration statement for coverage under the VPDES General Permit, submitted by Dynamic on June 27, 2014, indicated that the owner and operator's name was Dynamic Aviation Corp (rather than Dynamic Aviation Group, Inc.).

Additionally, during the file review staff noted that the 2014 registration statement was signed, but not by a responsible corporate officer for Dynamic, and that Dynamic had not obtained VPDES General Permit coverage for the Logistics Center and Building 7.

DEQ staff concluded from their inspections, as well as their subsequent file review, that industrial activity falling under Standard Industrial Code (SIC) 45 was taking place at the Logistics Center and Building 7 and that stormwater discharges associated with these industrial activities would have occurred during a time when agency records indicate that Dynamic did not have permit coverage for the discharges.

6. On July 5, 2016 and July 21, 2016, DEQ's VWP staff inspected the subject facility due to potential wetland impacts observed during the June 20, 2016 inspection. DEQ's VWP staff made the following observations:
  - a. Appearance of approximately 630 linear feet of stream had been filled.  
Appearance of impacts to approximately three acres wetlands at the northern end of the property, with an estimated additional 0.20 acres of wetlands filled at the Hangar E construction site.
7. The Department has not issued a VPDES General Permit or permit coverage to Dynamic for discharges of stormwater associated with industrial activity at the Logistics Center and Building 7. The Department has not issued a VWP Permit for the discharge of fill material at the Airport.
8. On July 21, 2016, VWP inspection conducted at the Airport by DEQ staff. US Army Corps of Engineers and Dynamic's consultant, Ecosystem Services, were also onsite during the inspection. The DEQ recommended that a jurisdictional delineation be performed.
9. On August 23, 2016 DEQ sent a Request for Information to Dynamic Aviation.
10. On October 19, 2016, Ecosystem Services provided a Preliminary Jurisdictional Determination for the Airport. The Preliminary Jurisdictional Determination concluded that 1.03 acres of wetlands had been impacted, along with 0.24 acres of open water.
11. On October 26, 2016, Dynamic submitted an updated general VPDES stormwater permit registration along with a revised SWPPP.

12. On December 12, 2016, DEQ and USACE staff were onsite to confirm the jurisdictional delineation provided by Ecosystem Services.
13. On December 20, 2016, DEQ sent an additional letter of Request for Information to Dynamic Aviation.
14. On April 26, 2017, USACE provided its Preliminary Jurisdictional Delineation Form stating 1.03 acres of wetland may be subject to regulatory jurisdiction were potentially impacted by fill material.
15. On April 28, 2017, during a meeting with Dynamic and DEQ staff at the Valley Regional Office, it was determined that a separate VPDES General Stormwater Permit registration was not needed for the Logistics Center.
16. On May 8, 2017, Ecosystem Services performed a site inspection at the Airport to evaluate the alleged impact of 630 linear feet of stream near Hangar D and Hangar E.
  - a. On May 25, 2017, Ecosystem Services issued a letter of Wetland Feasibility Investigation. This letter included a professional determination that the area in question is a linear palustrine emergent wetland. Approximately 5,409 square feet (0.12 acres) of this area was potentially impacted by fill material.
17. On June 8, 2017, Dynamic submitted a General VPDES Stormwater registration statement for Building 7 and a revised registration statement for the Airport and Logistics Center.
18. On June 22, 2017, Dynamic submitted additional changes to the VPDES registration statements and associated documentation for the Airport and Building 7 based on phone call from DEQ staff.
19. Dynamic has responded timely to the NOVs and information requests received from the Department.
20. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
21. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 states that except in compliance with a VWP permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters.
22. The VPDES Permit Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

23. The Stormwater Regulation, at 9 VAC 25-151-10, defines transportation facilities classified as SIC Code 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations as engaged in industrial activity.
24. The Stormwater Regulation, at 9 VAC 25-151-20, indicates that it governs all stormwater discharges associated with industrial activity from facilities in any of the industrial activity categories defined in 9 VAC 25-151-10, through a point source to surface waters.
25. The Stormwater Regulation, at 9 VAC 25-151-50, indicates that any owner governed by the VPDES General Permit is authorized to discharge stormwater associated with industrial activity to surface waters of the Commonwealth of Virginia provided that the owner submits a registration statement in accordance with 9 VAC 25-151-60.
26. The Stormwater Regulation, at 9 VAC 25-151-70.II.F, states that except in compliance with the VPDES General Permit or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
27. The Stormwater Regulation, at 9 VAC 25-151-60.B.1 requires owners of existing facilities to submit a registration statement for coverage under the VPDES General Permit no later than May 2, 2014.
28. The Stormwater Regulation, at 9 VAC 25-151-60.B.2 requires owners of new facilities to submit a registration statement for coverage under the VPDES General Permit sixty days prior to the date planned for commencement of the industrial activity.
29. The Stormwater Regulation, at 9 VAC 25-151-60.A requires owners seeking coverage under the VPDES General Permit to submit complete registration statements that meet the requirements of 9 VAC 25-151-60.
30. The Stormwater Regulation, at 9 VAC 25-151-60.C requires that registration statements for the VPDES General Permit contain the name of the owner or operator applying for General Permit coverage.
31. The Stormwater Regulation, at 9 VAC 25-151-60.D requires that registration statements for coverage under the VPDES General Permit be signed by a responsible corporate officer.
32. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
33. In part as a result of the observations cited above, NOV No. W2-16-08-COO-002 was issued to Dynamic on August 31, 2016.
34. Dynamic timely responded to the NOV and to DEQ’s multiple requests for information.
35. Based on the results of the inspections and the subsequent file review, Dynamic’s responses to the Information Requests, and meetings with Dynamic, the Board concludes

that Dynamic has violated the Virginia Code and Regulations as cited in C(20) through C(31) above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Dynamic, and Dynamic agrees to pay a civil charge of \$50,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Dynamic shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Dynamic shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Dynamic for good cause shown by Dynamic, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facilities; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dynamic admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact, and conclusions of law contained herein
4. Dynamic consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dynamic declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other



administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Dynamic to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dynamic shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dynamic shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dynamic shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dynamic. Nevertheless, Dynamic agrees to be bound by any compliance date which precedes the effective date of this Order.

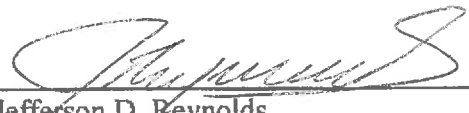
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Dynamic has completed all of the requirements of the Order;
- b. Dynamic petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dynamic.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dynamic from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Dynamic and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Dynamic certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Dynamic to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible officer of Dynamic.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Dynamic voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of April, 2018.

  
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Jefferson D. Reynolds  
Director of Enforcement  
Department of Environmental Quality

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Dynamic Aviation Group, Inc. voluntarily agrees to the issuance of this Order.

Date: 2-1-2018 By: [Signature], Chief Operating Officer  
(Person) (Title)  
Dynamic Aviation Group, Inc.

Commonwealth of Virginia  
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 1<sup>st</sup> day of  
February, <sup>2018</sup> ~~2017~~, by Shannon Wagner who is  
Chief Operating Officer of Dynamic Aviation Group, Inc., on behalf of the  
corporation.

[Signature]  
Notary Public  
7508057  
Registration No.

My commission expires: August 31, 2019

Notary seal:



## APPENDIX A

### SCHEDULE OF COMPLIANCE

1. Dynamic completed a wetland delineation for the sandpit area; no activities in that area of the property shall be taken unless the delineation is reviewed and, if necessary based on that delineation, authorization from DEQ or the appropriate agency is granted via a Permit. As Dynamic is currently in compliance with this Condition, it shall not be a basis for denying a request to terminate this Order once all other actions in this Appendix are completed.
2. No later than 60 days after the effective date of the Order, Dynamic shall remove the specified material (such as non-treated lumber, posts and concrete rubble) from the wetlands in the sandpit area in accordance with the assessment submitted to DEQ on December 1, 2017. Dynamic shall provide written confirmation of the removal, including any receipts for the disposal of the material, to DEQ within 30 days of completion of the removal.
3. No later than 30 days after the effective date of the Order, submit proof of purchase of 1.134 advance wetland credits from the Virginia Aquatic Resources Trust Fund and 0.966 credits from a mitigation bank authorized and approved by DEQ to sell credits in the area in which the impacts occurred and with credits available.
4. Unless otherwise specified in this Order, Dynamic shall submit all requirements of Appendix A of this Order to:

Tiffany Severs, Enforcement Specialist Senior  
Valley Regional Office  
PO Box 3000  
Harrisonburg, Virginia 22801  
Office: 540-574-7859, Fax: 540-574-7878  
tiffany.severs@deq.virginia.gov

